

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

ELIZABETH BIERLY, et al.,

Plaintiffs,

vs.

MARK HIRATA, et al.,

Defendants.

ORDER ADOPTING REPORT AND
RECOMMENDATION

Case No. 2:08 CV 948 TC

The court referred this case to Chief Magistrate Judge David O. Nuffer pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B). Although the heading of the amended complaint lists additional plaintiffs, Plaintiff Elizabeth Bierly is the only plaintiff properly before the court. (See Report and Recomendation, n.1)

On July 20, 2009, Judge Nuffer, issued a very thorough Report and Recommendation¹, recommending that this case be DISMISSED under 28 U.S.C. § 1915. Within the Report and Recommendation the court DENIED (1) Bierly's motion for service of process; (2) Bierly's Motion for Special Federal Grand Jury and Independent Prosecutor; (3) Bierly's motion for immediate hearing; and (4) Bierly's motion for extension of time to serve Defendant Dr. Dana

¹(Dkt. 52)

Hardin. The court GRANTED The State Defendants' Motion to Quash Attempted Service of Process and GRANTED Bierly's motion for extension of time to respond to Defendants Arguetta and Jarvis' motion to dismiss. Additionally, the court GRANTED Defendants Arguetta and Jarvis' Motion to Strike Plaintiff's Reply Memorandum in Support of Complaint Against Defendants Arguetta and Jarvis and STRUCK Bierly's Reply Memorandum in Support of Complaint Against Defendants Arguetta and Jarvis.

On August 19, 2009, nearly one month after the Report and Recommendation, Defendant Mark Shurtleff filed a motion to dismiss². Defendant Shurtleff's motion to dismiss is DENIED as moot.

The parties were given ten days to file objections to the Report and Recommendation and were cautioned that failure to file an objection could constitute waiver thereof upon subsequent review.

Bierly moved the court for additional time to file her objections and that motion was GRANTED. Bierly filed her objections, together with an addendum to objections on August 14, 2009.³ The court has carefully reviewed Bierly's objections and finds they do nothing to cure the infirmities of the amended complaint. Judge Nuffer's Report and Recommendation provides a comprehensive review of those infirmities thus they will not be repeated in this order.

This court agrees with the recommendation of Judge Nuffer. The Report and Recommendation is adopted as the order of the court. Bierly's complaint is frivolous and fails to

²(Dkt. 58)

³(Dkt. 56 and Dkt. 57)

state a claim upon which relief may be granted. Because the infirmities could not be corrected by a second amended complaint, Bierly's complaint is DISMISSED with prejudice. Bierly's motion for default judgment is DENIED as moot. Defendants Argueta and Jarvis' motion to dismiss is GRANTED. Defendant Hirata's motion to dismiss is GRANTED. Bierly's claims against all other defendants are dismissed with prejudice under 28 U.S.C. § 1915(e).

IT IS SO ORDERED THIS 4th day of September 2009.

BY THE COURT:



TENA CAMPBELL
Chief Judge